IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 33636 of 2006(D)

PETITIONER:

S.H.NAJUMUDHEEN,
S/O.SHAHUL HAMEED, EDAYILA HOUSE,
PALLIKKAL P.O., KILLIMANOOR.

BY ADV. SRI.SERGI JOSEPH THOMAS
SRI.S.AJAY KUMAR

RESPONDENTS:

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1. THE JOINT REGISTRAR,
CO-OP. SOCIETIES DEPARTMENT,
KOLLAM.

2. THE CHADAYAMANGALAM SERVICE CO-OP.
BANK LTD. NO. 1868, CHADAYAMANGALAM,
REP. BY ITS SECRETARY.

BY ADV. SRI. K.SIJU
SRI.A.MUHAMMED RAFFI
SR. GOVT. PLEADER SRI. P.K. RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF RELEASE DEED DT. 29-4-2006.

EXT.P2 ENCUMBRANCE CERTIFICTE DT. 24-6-2006.

EXT.P3 REPRESENTATION DATED 5-12-2006.

EXT.P4 NSSOTARISED AFFIDAVIT.

RESPONDENTS' EXHIBITS:

EXT.R2(1) TRUE COPY OF SALE DEED DT. 22-3-2006.

EXT.R2(2) ENCUMBRANCE CERTIFICATE.

EXT.R2(3) COPY OF APPLICATION DT. 27-8-2006.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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W.P(C) No. 33636 of 2006

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Dated this, the 27th February, 2007.

J U D G M E N T

Petitioner had availed of a loan from the 2nd respondent-Bank. According to the petitioner, at the time of availing of the loan, he had deposited the title deeds of the properties mortgaged with the Bank as security for the loan. However, in spite of the fact that the entire dues have been paid off, the title deeds are not returned to him and he seeks a direction to the Bank to return those title deeds.

2. The Bank has filed a counter affidavit stating that the mortgage was a registered mortgage and therefore the title deeds were not deposited with the Bank as security. The petitioner has filed a reply affidavit along with which he has produced an affidavit of the then Secretary of the Bank stating that at the time of availing of the loan, the petitioner had in fact deposited the title deeds of the properties with the Bank. Evidently, from the above averments of the parties, it is clear that disputed questions of fact are involved in this writ petition which cannot be resolved with the help of affidavits under Article 226 of the Constitution of India. However, the petitioner submits that he has filed Ext. P3 application before the Joint Register and seeks a direction to the 1st respondent-Joint Registrar to consider and pass orders on Ext. P3 expeditiously.

3. Having beard both sides, I direct the 1st respondent-Joint registrar to consider and pass orders on Ext. P3 as expeditiously as possible at any rate within a period of six weeks from the date of receipt of a copy of this judgment. The petitioner as well as the 2nd respondent-Bank shall be afforded an opportunity of being heard. The petitioner would be free to place all such materials which are in his possession and also cite all the statutory or other provisions

relevant for the purpose before the Joint Registrar, who shall consider all those materials before passing final orders. Such opportunity should be afforded to the Bank also. The writ petition is disposed of as above.

Sd/- S. Siri Jagan, Judge.

Tds/